



Digital Solutions / Inmate Telephone, Inc.

Offender Management System | Offender Communication System | Probation and Parole | Call Track | Juvenile Detention

August 31, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Petition for Declaratory Ruling of Securus Technologies, Inc.*, WCB Docket No. 09-144

Dear Ms. Dortch:

Inmate Telephone, Inc. ("ITI") fully supports Securus Technologies, Inc.'s Petition for Declaratory Ruling filed in WCB Docket No. 09-144 (the "*Securus Petition*"). ITI agrees that the Federal Communications Commission ("FCC" or the "Commission") should issue a declaratory ruling that call diversion schemes are a form of dial-around calling which inmate telephone providers like ITI are permitted to block under the Commission's existing precedent.¹ Public safety and prison security, which were the concerns that lead the Commission to permit inmate telephone service providers to block dial-around calls, apply equally to call diversion schemes. Call diversion schemes interfere with inmate telephone service providers' ability to fully secure and monitor telephone calls made by inmates. In particular, these schemes prevent inmate telephone service providers from identifying the true terminating telephone numbers of calls made, thus preventing correctional facilities from restricting whom an inmate is allowed to call. Indeed, not allowing inmate telephone service providers to block call diversion schemes will undermine the FCC's enforcement of the Communications Assistance for Law Enforcement Act ("CALEA"). For these reasons, which are described in greater detail below, the public interest demands expeditious FCC action to grant the *Securus Petition*.

Inmate telecommunications services are highly specialized and require specific security features including the ability of providers to capture terminating telephone call numbers. Law enforcement and correctional facility personnel need this information to ensure that inmates cannot call specified protected numbers such as those of judges, witnesses, and jury members or otherwise call people that the inmate has not previously identified to the correctional facility.

¹ See *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744 (1991); *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998).

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Because of these special security needs, the FCC has recognized that inmate telephone providers must be able to block dial-around calls. Based on comments in the record indicating that inmate-only phone providers are required by correctional institutions to allow only collect calls and to block phone numbers for certain individuals such as judges, witnesses, and jury members, the Commission determined that “the provision of [inmate-only] phones to inmates presents an exceptional set of circumstances that warrants their exclusion” from call blocking standards applied to other aggregators.² Additionally, as the *Securus Petition* notes, the Commission further exempted inmate telephone service providers from the requirement to permit callers to use alternative operator service providers when making long-distance calls citing “special security requirements applicable to inmate calls.”³

As demonstrated in the *Securus Petition*, call diversion schemes pose the same security threats that the FCC has attempted to eliminate by permitting inmate telephone service providers to block dial-around calls. Call diversion schemes re-route inmate-initiated calls to unknown terminating telephone numbers. Call diversion providers supply users with telephone numbers that are local to the jail in which the inmate is incarcerated. When inmates dial these “local” numbers, the call is then re-routed to an untraceable terminating number. As representatives of correctional facilities have stated in the record, when correctional facilities cannot identify the terminating call number, public safety and prison security are threatened.⁴

Additionally, inmates’ use of call diversion schemes will undermine the FCC’s enforcement of CALEA. Inmate telephone service providers like ITI are exempt from CALEA compliance obligations because they record all telephone conversations pursuant to agreements with correctional facilities.⁵ Call diversion scheme operators have no agreement or relationship with correctional facilities and cannot be easily traced. As a result, law enforcement officials have no control over whether these operators comply with CALEA and are thus not able to intercept or monitor such calls.

² *Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd at 2749-52 ¶¶ 9-15.

³ *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd at 6156 ¶ 57 (1998).

⁴ See, e.g., Letter from Barry M. Harmon, Jailer, Boyle County Detention Center, WC Docket No. 09-144 (filed Aug. 25, 2009); Letter from Donald K. Hall, Jailer, Rowan County Detention Center, WC Docket No. 09-144 (filed Aug. 25, 2009); Letter from Theodore B. Burner, Captain, Jail Administrator, Darke County Sheriff’s Office, WC Docket No. 09-144 (filed Aug. 25, 2009).

⁵ ITI and other inmate-only telephone service providers are exempt from CALEA compliance obligations because their services fall within two different exemptions from the Title III intercept requirements, 18 U.S.C. 2510 *et seq.*, including the exclusionary terms of section 2510(5)(a)(ii) and the consent exception in section 2511(2)(c). See *Smith v. Dep’t of Justice*, 251 F.3d 1047, 1049-50 (D.C. Cir. 2001) citing *United States v. Van Poyck*, 77 F.3d 285, 292 (9th Cir. 1996); *United States v. Daniels*, 902 F.2d 1238, 1245 (7th Cir. 1990); *United States v. Feekees*, 879 F.2d 1562, 1565-66 (7th Cir. 1989); *United States v. Paul*, 614 F.2d 115, 117 (6th Cir. 1980).

August 31, 2009

Page 3

Given the serious security threat posed by call diversion schemes, the FCC should act quickly to issue a declaratory ruling that clarifies that call diversion schemes are a form of dial-around calling that inmate telephone service providers are permitted to block under existing FCC precedent.

Respectfully submitted,

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